

REMARKS

Applicants note the telephone interview conducted on June 15, 2006 with Examiner Lien by applicant's attorney, M. Bressler. Pursuant to that telephone interview, a proposed amendment was proffered by facsimile transmission. That facsimile transmitted amendment, directed to Claims 1 and 4, is included in the instant amendment. In addition, the amendments made to Claims 2, 3, 5 and 8 in the unentered Amendment under 37 C.F.R. §1.116, filed April 19, 2006, have again been introduced herein.

The amendments to independent Claims 1 and 4 overcome the barrier to admission which prompted the non-entrance of applicant's earlier Amendment under 37 C.F.R. §1.116. That is, amended Claims 1 and 4 include language fully supported by the originally filed specification. As such, no new issues requiring further consideration and/or search is required. Admission of this amendment is therefore deemed appropriate. Such action is respectfully urged.

The amendments to Claims 1 and 4 overcome the formal grounds of rejection imposed in the Official Action, dated March 9, 2006, making final the rejection of the present application.

The first of these grounds is the rejection of Claims 1, 4 and 8 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Official Action states that the rejected claims contain subject matter not described in the specification in a manner to reasonably convey to one skilled in the art that the inventor, at the time of the application was filed, had possession of the claimed invention.

The predicate for this ground of rejection is the introduction, in the Amendment filed September 8, 2005, of limitations in Claims 1, 4 and 8 of phrases that include “borders being distant to one another,” “distant borders” and “distant top and bottom borders.” The Official Action argues that these limitations are not supported by the originally filed application.

This ground of rejection has been made moot by the instant amendment of Claims 1, 4 and 8. Suffice it to say, the amended claims are completely free of the phrases included in those claims prompting this ground of rejection.

The second ground of rejection is also directed to Claims 1, 4 and 8. Claims 1, 4 and 8 stand rejected, under 35 U.S.C. §112, second paragraph, as being indefinite.

The indefiniteness alleged in Claims 1, 4 and 8 resides in the inclusion of the phrase “being distinct to one another”. This phrase, the Official Action avers, is contradictory to the phrase “superposition of the top and bottom borders”.

Although applicant submits that there is no contradiction in these terms, the former phrase has been deleted from Claims 1, 4 and 8. The removal of this phrase makes moot the predicate for this ground of rejection. Reconsideration of the formal grounds of rejection, in view of the amendment to Claim 1, 4 and 8 and the above remarks, is respectfully solicited.

Two substantive grounds of rejection are imposed in the outstanding Official Action. The first of these is directed to Claims 1-5. Claims 1-5 stand rejected, under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 4,400,404 to Persi taken in view of U.S. Patent No. 5,756,137 to Viviano et al.

The Official Action argues that Persi discloses a method of making a pizza food product which comprises the steps of shaping a dough into a rectangular shape, placing pizza ingredients along the central portion of the dough, folding the dough along its longitudinal length, such that long edges are in abutment, pressing the edges against each other so as to provide a tight seal for the ingredients therewithin and heating the filled dough product.

The Official Action admits that Persi does not teach folding the dough after it is cooked, as well as not coating the edge with an edible paste of starch. Moreover, the Official Action further admits that the Persi method includes an additional step of forming a toroidal shape after folding the dough.

The Official Action thus concedes that Persi alone does not make obvious any of the five process claims, Claims 1-5, against which it is applied. That is, the Official Action admits that Persi does not teach folding dough after it is cooked and does not teach coating the edge with an edible starch paste.

Applicant submits that these shortcomings in Persi are not rectified by the application of the secondary Viviano et al. reference. Viviano et al. is applied for its disclosure of adding a food starch to dough layers to increase their stickiness to one another. Applicant strongly urges that this Viviano et al. does not make obvious either of the two aforementioned critical elements predicated patentability of Claims 1-5 over the principal Persi reference.

Applicant submits that Persi does not disclose the folding of cooked pizza dough. (Emphasis Added). Like Persi, Viviano et al. provides a dough food product in which the dough is folded prior to cooking. Attention is directed to Claim 1 of Viviano et al.

Therein, the folding and forming of a dough layer, to enclose filling ingredients, occurs prior to baking of the food product. As such, the teaching of Viviano et al., whose specification is consistent with the recitation in Claim 1, does not teach the improved method of folding a cooked dough.

As stated at Page 1 of the specification of the present application, pizzas in the form of turnovers, if adequately cooked, cause overcooking of the dough envelope and to burning. By folding the dough after it is cooked, rather than before cooking, as currently practiced in the prior art, those undesirable results are avoided. The utilization of raw dough, on the other hand, as taught by the applied references, requires additional heat to seal the folded edges, such that the dough can easily be burnt or, in the absence of sufficient heat, to easy breaking of the seal and running of the pizza ingredients.

The process of Claims 1 to 5 of the present application discloses a process wherein the folded cooked dough, after being folded over itself, defines a space between the top and bottom layers of the dough. That space is filled with an edible paste. This feature provides yet another ground for patentability over the combined teaching of Persi and Viviano et al.

Obviously, the utilization of a filling paste provides a much better seal for enclosing pizza ingredients than heretofore possible. Both prior art references, directed to pizza type products, provide a seal formed by pressing dough pieces together. Clearly, such a seal is far inferior to the seal provided by a cordon of edible starch paste. This feature relates to the aforementioned distinction regarding the use of cooked dough. By utilizing cooked and hot dough, that heat permits the edible paste to form a relatively strong seal to enclose the pizza ingredients.

The Official Action appreciates the criticality of the utilization of a cordon of edible paste to seal the pizza ingredients. Thus, the Official Action argues that Viviano et al. discloses, at Column 6, lines 9-11, the addition of a food starch to the dough layer to improve sealing, which Viviano et al. implicitly admits was defective by suggesting the inclusion of starch as a dough ingredient.

Applicant submits that filling an opening between layers with starch paste produces a far greater seal than the mere increase in “stickiness” provided by the use of starch in the dough. Although the use of starch may improve a seal formed by the mere pressing together of dough layers, that seal is far inferior to one buttressed by the sealing thickness of an edible paste. Clearly, the process of Claims 1-5, which employ a cordon of an edible paste between folded cooked dough, represents a clear patentable distinction over the combined teaching of Persi and Viviano et al., which, at best, discloses utilization of a starch-enriched raw dough utilized to form a seal.

Reconsideration and removal of the rejection of process Claims 1-5, under 35 U.S.C. §103(a), over the combined teaching of Persi and Viviano et al. is therefore deemed appropriate. Such action is respectfully urged.

The second substantive ground of rejection is directed to the product claims, Claims 8-10. Claims 8-10 stand rejected, under 35 U.S.C. §103(a), as being unpatentable over Viviano et al.

The Official Action states that Viviano et al. discloses a filled pocket dough product. The Official Action argues that any distinction between the forming of the product resides solely in the processing steps. That is, the Official Action argues that the Viviano et al. product is the same as the product claimed herein. The Official Action

avers that the use of a cordon of edible paste, required in all the claims subject to this ground of rejection, is utilized by Viviano et al., which teaches application of a layer of food starch between dough layers.

Applicant respectfully challenges the argument made in the outstanding Official Action, which concludes that the addition of food starch to uncooked dough provides a seal as substantial as that produced by a cordon of edible starch acting as a paste. The clear teaching of Viviano et al., at Column 6, lines 9-11, is to add food starch to dough layer 14 to minimize seal breaches by aiding the dough layer to better stick together under sealing pressure. This is a far cry from a cordon or starch layer of a starch paste which acts as a seal. The teaching of Viviano et al. merely makes the dough somewhat stickier. The mechanical strength of a layer of a sealant provides greater leakage resistance than does the mere increase in stickiness of a dough layer.

The Official Action, appreciating the weakness of this argument, emphasizes that, somehow, the absence of a clear disclosure of the distance between the dough edges diminishes this argument. In any event, the Official Action states that the addition of starch paste to the dough used in Viviano et al. is equivalent to the distance filled in by the cordon of edible stretch paste.

Applicant respectfully submits that this argument is not credible. The fact that the dough layer is folded over itself to enclose a layer of pizza ingredients necessitates that there be a finite distance, albeit a small thickness, between layers. It is this thickness that is reinforced by the use of a cordon of starch paste. The addition of an ingredient, e.g., starch, to produce a dough layer would certainly not fill any finite distances formed by superpositioned layers of dough, one of whose ingredients is an edible starch.

Applicant strongly urges that the inclusion of a cordon of edible paste presents a product that is not only novel over the product taught by Viviano et al. also but unobvious thereover in view of the clear superiority in preventing leakage of the pizza ingredients at the folded edges of the pizza sandwich product of Claims 8-10 of the present application.

Applicant respectfully urges reconsideration and removal of this ground of rejection.

The above remarks establish that the amendments introduced into the claims better place those claims in condition for allowance. Therefore, entrance of the present Amendment is appropriate and is respectfully urged.

The above amendments and remarks establish the patentable nature of all the claims currently in this application. Notice of Allowance and passage to issue of these claims, Claims 1-5 and 8-10, is therefore respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marvin Bressler", with a long horizontal flourish extending to the right.

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